

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division**

ELIZABETH SINES, ET AL.,

Plaintiffs,

v.

JASON KESSLER, ET AL.,

Defendants.

Civil Action No. 3:17-cv-00072

**DEFENDANTS LEAGUE OF THE SOUTH, MICHAEL HILL, & MICHAEL TUBBS'S
MOTION IN LIMINE AND MOTION TO TAKE JUDICIAL NOTICE**

Defendants League of the South, Michael Hill, and Michael Tubbs, by and through Counsel, move this court for a pre-trial order on the admissibility of the following evidence:

1. The Heaphy Report,
2. Michael Tubbs's felony conviction, and
3. The following adjudicative facts:
 - a. On June 13, 2017, Jason Kessler obtained a permit from the City of Charlottesville to conduct a demonstration at Emancipation Park on August 12, 2017.
 - b. On August 7, 2017, the City of Charlottesville attempted to revoke Kessler's permit to conduct a demonstration at Emancipation Park on August 12, 2017.
 - c. On August 11, 2017, this Court enjoined the City from revoking Kessler's permit to hold a demonstration at Emancipation Park on August 12, 2017.

I. The Heaphy Report

Pursuant to FRE 803(8) and 902, Defendants move this Court for an order holding that the Heaphy Report is a self-authenticating official publication and allowing Defendants to introduce the Heaphy Report at trial.

The Heaphy Report was prepared by Timothy J. Heaphy at the request of the City of Charlottesville. Exhibit 1 at 22. On August 24, 2017, the City retained “Hunton & Williams LLP to perform an independent evaluation of the City’s handling of the summer protest events.” *Id.* The purpose of the report was to perform “an independent assessment on the City’s handling of several protest events in the summer of 2017.” In retaining Hunton & Williams LLP, City Manager Maurice Jones made clear that the report was to be an “objective review of the City’s handling of these challenging events ... regardless of whether those facts reflected favorably upon the City government or various individuals.”

FRE 803(3) allows reports of public offices or agencies to be introduced at trial unless the sources of information or other circumstances indicate a lack of trustworthiness. The Heaphy Report qualifies under this Rule because it is a report prepared at the request of the City of Charlottesville, a public agency. The Heaphy Report is trustworthy because of the manner in which it was prepared. The Report notes that the City “allowed us to preform a truly independent assessment of these events.” The Report notes that

“Over the course of our evaluation of these events, we reviewed hundreds of thousands of documents, watched or listened to countless hours of video and audio recordings, reviewed numerous still images, and interviewed hundreds of witnesses. Although we did not obtain all information we sought, we were able to access a tremendous volume of information from a wide array of sources. We believe this information provides a thorough factual basis for the findings and recommendations outlined below.” *Id.* at 23.

Over the course of this litigation, Plaintiffs have accused Defendants of creating a false narrative and being disingenuous about the events of August 12, 2017. The Heaphy Report is a trustworthy, independent source of relevant information on the events of August 12, 2017. The

Report will be a valuable aid to the jury in determining whether Plaintiffs' claims are true. The authors of the Report

"tried to assemble a coherent narrative of the protest events that occurred in Charlottesville ... To construct the narrative contained in this report, we spoke to hundreds of people and gathered a wide array of perspectives about these events. We reviewed hundreds of thousands of documents that provide important information. We viewed many hours of video and thousands of photographs ... We sifted through and consolidated all of this information to produce a cogent summary of what happened in Charlottesville." Id. at 10.

Allowing the Defendants to introduce the Report at trial will also significantly shorten the length of trial. Plaintiffs have filed an exhibit list with over 3000 documents, photos, videos, and other pieces of evidence. Plaintiffs' proposed witness list also includes dozens of potential witnesses. The Heaphy Report will assist in streamlining the presentation of evidence.

Pursuant to FRE 902, the Heaphy Report qualifies as a self-authenticating official publication. It is not necessary to subpoena Timothy Heaphy to authenticate the Report because it is a readily available official publication commissioned by the City of Charlottesville.

II. Michael Tubbs's Felony Conviction

Pursuant to FRE 609, Defendants move this Court for an order barring Plaintiffs from introducing evidence or making mention at trial of Michael Tubbs's felony conviction. Evidence of Michael Tubbs's felony conviction is inadmissible because the conviction occurred more than ten years ago and Plaintiffs have not provided sufficient advanced written notice of an intent to introduce such evidence.

III. Judicial Notice of Jason Kessler's Permit

Pursuant to FRE 201, Defendants move this Court to take judicial notice of the following adjudicative facts:

1. On June 13, 2017, Jason Kessler obtained a permit from the City of Charlottesville to conduct a demonstration at Emancipation Park on August 12, 2017.
2. On August 7, 2017, the City of Charlottesville attempted to revoke Kessler's permit to conduct a demonstration at Emancipation Park on August 12, 2017.
3. On August 11, 2017, this Court enjoined the City from revoking Kessler's permit to hold a demonstration at Emancipation Park on August 12, 2017.

As a basis for this Court to take judicial notice of the above-mentioned facts, Defendants attach as Exhibit 2, this Court's order in *Kessler v. City of Charlottesville*, Civil Action No. 3:17CV—56, Decided August 11, 2017.

Defendants League of the South, Michael Hill, and Michael Tubbs, by and through Counsel, move this court for a pre-trial order on the admissibility of the above-mentioned evidence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify the above was served on October 4, 2021 on all ECF participants and that parties requiring service by other means were served as follows:

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